IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Summ.Suit No.678 of 1987

Vasantrai H.Shah ..Plaintiff

vs.

Jalan Dyeing and Bleaching Mills ..Defendants

Mr.Subodh Joshi for plaintiff.
None for defendants.

CORAM: S.C.DHARMADHIKARI J.
9th August, 2007

P.C.

1. This suit was earlier filed as a summary suit by the plaintiff. A Summons for Judgment was taken out after the defendants entered appearance. This Summons for Judgment was placed before the Court. The defendants sought leave to defend the suit on the pleas raised in the affidavit in reply.

2. After the Court heard both sides, the Summons for Judgment was made absolute by granting conditional leave to defendants to defend the suit on their depositing a sum of Rs.50,000/- in this Court.

3. Mr.Joshi, learned Counsel appearing for the plaintiff, states that this order has been duly complied with in as

much as neither the same was challenged nor any extension of time was sought to deposit the sum in this Court. The sum having been deposited the defendants became entitled to defend the suit.

4. After the written statement was filed in the suit on 29th November, 1997 and the same was taken on file repeatedly the suit has been appearing for hearing and final disposal. The defendants have remained absent in this Court and Mr.Joshi has invited my attention to the order passed by this Court on 29th November, 1999 on which date the appearance was put in by the defendants and from 26th April, 2007 onwards he submits that on every occasion thereafter only the plaintiff has been appearing but the defendants have remained absent. In compliance of this Court's order dated 12th August, 2007 a notice has been duly given to the defendants' Advocate. He submits that even the draft issues have been tendered in this Court. The defendants were informed that the Court would not adjourn the matter and that he should remain present on the adjourned date.

5. Even after the adjourned date none has been appearing for the defendants.

6. Mr.Joshi, therefore, submits that in the light of the pleas raised in the plaint and written statement only two issues would arise. Accordingly the following issues are framed.

i) Whether the plaintiff proves that he supplied the suit goods to the defendants?

ii) Whether the defendants prove that the goods supplied by the plaintiff to them was of inferior qualities?

iii) What order?

7. Mr.Joshi submits that the plaintiff has already filed the documents along with the list and affidavit in lieu of the examination in chief of the plaintiff’s witness Vasant H.Shah.

8. Mr.joshi submits that perusal of the bills and delivery challans would show that the goods have been duly received by the defendants in as much as at the foot of every challan the signature appears alongwith the rubber stamp "subject to approval". The store keeper has received the goods which are subject matter of the

bills/invoices. Even the forms necessary to be supplied under the Sales Tax Act have been duly supplied. He also invites my attention to the correspondence between the parties commencing from 2nd August, 1986 and statement of account so also the copies of the Advocate's notice which have been duly received as evidenced by the acknowledgment cards. He also invites my attention to the affidavit in lieu of the examination in chief and states that existence of the document together with the contents thereof is proved. He submits that the documents can safely be marked as exhibits and their contents relied upon, more so, when despite opportunity being given the defendants have remained absent.

9. Mr.Joshi has invited my attention to the written statement of the defendants and more so paragraph 2 thereof and submits that there is no proof of assertions in the written statement that the goods were not received or that the bills/invoices are bogus. On the other hand, he submits that the defendants are aware that their store keeper has signed these bills as is clear from paragraph 2 of the written statement. He also invites my attention to paragraph 3 of the written statement and submits that would reflect the receipt of the goods but a dispute is raised about their quality. He submits that each of these

disputes and claims arising therefrom have to be substantiated by adducing evidence. The allegation of collusion also has to be proved.

10. I have with the assistance of Mr.Joshi perused the plaint, written statement, compilation of documents and affidavit in lieu of the examination in chief.

11. In my view, once the defendants have an opportunity not only to controvert or contradict the statements made on oath by cross examining the plaintiffs on its case and that opportunity having not been availed of, so also the defendants failing to adduce any evidence to prove the case set up in the written statement this Court can in its discretion proceed to decree the suit.

12. It is well settled that if this Court is of the opinion that the written statement contains only evasive pleas with a view to defeat the claim of the plaintiff in the suit and the defendants are aware of its liability that this Court’s discretion can be exercised in favour of the plaintiff even after the written statement is filed.

13. In that event before the discretion is exercised the Court can grant opportunity to the defendants to cross

examine the plaintiff on his case. Such an opportunity has always been afforded to the defendants in this suit as would be evident from the roznama. However, the defendants and their Advocate have remained absent in this Court after 1999.

14. In the suit which is filed in the year 1987 and the Summons for Judgment thereunder disposed of in 1989, this Court cannot indefinitely wait for the defendants.

15. Accordingly, after framing the issues the suit was placed before me for hearing and final disposal. I have satisfied myself that the plaintiff is not disentitled from claiming the relief in law. This Court has jurisdiction to entertain and try the suit. The claim of the plaintiff is also not barred by law of limitation. In such circumstances, there is no impediment for this Court to decree the suit.

16. The suit is accordingly decreed as prayed. Advocate’s fee as per rules. The plaintiff would be at liberty to withdraw the sum deposited in this Court by the defendants along with accrued interest after the appeal period is over.

(S.C.DHARMADHIKARI J.)